



triangle project

Submission to the Department of Justice
and Constitutional Development
on the
Criminal Law (Sexual Offences and Related Matters)
Amendment Bill, 2022

By Triangle Project
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Introduction

Triangle Project welcomes the opportunity to engage with the Department of Justice and Constitutional Development in order to strongly support the [Criminal Law \(Sexual Offences and Related Matters\) Amendment Bill, \[B - 2022\]](#) (“the Bill”).¹

[Triangle Project](#)² is a non-profit human rights organisation offering professional services to ensure the full realisation of constitutional and human rights for lesbian, gay, bisexual, transgender, queer, intersex, plus (LGBTQI+) persons, their partners and families.

Our three core services centre around Health and Support, Community Engagement and Empowerment, and Research and Advocacy. We offer a wide range of services to LGBTQI+ communities. These include health services related to general and sexual health, counselling, support groups, a helpline, public education and training services, advocacy, community outreach, and court support to survivors of hate crimes.

This submission falls within our Research, Advocacy and Policy Programme that works to advance inclusion, human rights and justice for LGBTQI+ people, which include LGBTQI+ sex workers, and in particular, transgender sex workers.

Submissions on the Bill

As a human rights organisation that provides health and support services to marginalised LGBTQI+ people, among whom the **most vulnerable are black transgender sex workers**, **Triangle Project strongly demands the full decriminalisation of both the buying and selling of sex**. This must happen as a **matter of utmost urgency**.

We recognise that the aims of the long overdue Criminal Law (Sexual Offences and Related Matters) Amendment Bill, [B - 2022] are: to repeal legislation^{3 4} that criminalises buying and selling of sexual services; to expunge all existing criminal records for sex work; and to cease and withdraw all criminal proceedings related to sex work. As such, **we fully support the Bill as it stands**.

We cannot emphasise enough the ongoing systemic injustices, gross human rights violations, violence, exclusion and denial of services experienced by sex workers in South Africa, including LGBTQI+ sex workers. Transgender sex workers, in particular, face multiple intersectional forms of exclusion and violence from society,⁵ including on the basis of engaging in sex work for their livelihoods, on the basis of their gender identity and gender

¹ <https://static.pmg.org.za/20221208-CriminalLawSexualOffences- AmendmentBill.pdf>

² <https://triangle.org.za/>

³ Sexual Offences Act, 1957 (Act No. 23 of 1957).

⁴ Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), Section 11.

⁵ Gulam Petersen, Trans sex workers, 2 July 2021, <https://www.newframe.com/s5-episode-7-edwin-cameron-trans-sex-workers/> (20:35 – 33:22).

expression, and frequently also on the basis of living with HIV and TB,⁶ and being unhoused. The continued gross injustice of the criminalisation of sex work turns their lives into a daily struggle, places them in violent and dangerous situations, prevents them from accessing justice and contributes to pushing them to the outer margins as one of the most vulnerable and oppressed populations in the country.

LGBTQI+ populations in general already constitute marginalised and vulnerable groups on the basis of our sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIESC). The vulnerability of LGBTQI+ populations to sexual violence, hate crime and discrimination are already recognised in various government legal and policy documents, including in the Department of Justice and Constitutional Development's National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Sector,⁷ South African National Strategic Plan (NSP) for HIV, TB and STIs 2017 – 2022⁸ and South African National LGBTI HIV Plan, 2017-2022.⁹

An important recent study¹⁰ on experiences of violence, mental health, well-being and access to healthcare among LGBTI people in South Africa found that almost half of participants were survivors of sexual violence and more than half of participants had experienced some form of physical violence at some point in their lives.¹¹ These rates are higher than the general population.

The study further found that social exclusion, marginalisation and stigma have a negative impact on the mental health and wellbeing of LGBTI people, and that they have higher levels of depression, anxiety and suicidality than the general population.¹² Almost a quarter of participants had experienced healthcare being denied to them, and almost a third had experienced being called names or being insulted by healthcare staff.¹³ Additionally, 44% of

⁶ South African National Strategic Plan (NSP) for HIV, TB and STIs 2017 – 2022, https://sanac.org.za/wp-content/uploads/2017/06/NSP_FullDocument_FINAL.pdf

⁷ <https://www.justice.gov.za/vg/lgbti/NIS-LGBTIProgramme.pdf>

⁸ https://sanac.org.za/wp-content/uploads/2017/06/NSP_FullDocument_FINAL.pdf

⁹ <https://sanac.org.za/wp-content/uploads/2017/06/LGBTI-HIV-Plan-Final.pdf>

¹⁰ Müller, A., Daskilewicz, K. & the Southern and East African Research Collective on Health (2019). *Are we doing alright? Realities of violence, mental health, and access to healthcare related to sexual orientation and gender identity and expression in South Africa: Research report based on a community-led study in nine countries*. Amsterdam: COC Netherlands, http://www.ghju.uct.ac.za/sites/default/files/image_tool/images/242/PDFs/Dynamic_feature/SOGIE%20and%20wellbeing_07_South%20Africa.pdf

¹¹ *Ibid.* pp. 41, 46.

¹² *Ibid.* p.93.

¹³ *Ibid.* p.38.

participants reported that they had tried to hide a health concern related to their sexual orientation or gender identity from a healthcare provider.¹⁴

We have found similarly concerning patterns among clients of Triangle Project's Health and Support Services. In our experience, black transgender sex workers face the starkest and harshest of these realities among the communities we serve. The decriminalisation of both the buying and selling of sex work is urgently needed to improve their lived realities, livelihoods and social circumstances.

Conclusion

In conclusion, we would like to bring to your attention that it is already four years since the Sunflower Promise made by President Cyril Ramaphosa in 2019 to stand in solidarity with sex workers by committing to decriminalising sex work and safeguarding sex workers' human rights.¹⁵ ¹⁶ Sex workers have struggled for recognition, safety, justice and dignity for much longer, and to date have been ignored and pushed aside.

We urge the Department of Justice and Constitutional Development and government to end the injustices to which sex workers are subjected by the State and society through ensuring the full decriminalisation of sex work, which entails decriminalising both the buying and selling of sex. This requires the urgent and speedy enactment of the Criminal Law (Sexual Offences and Related Matters) Amendment Bill, [B - 2022] as it stands, which we fully support as Triangle Project, and which is endorsed by Lawyers for Human Rights.¹⁷

Finally, we urge government not to stop here, but also to ensure that other issues that violate and adversely affect sex workers are prioritised and addressed, including **removing discriminatory bylaws that continue to criminalise sex workers.**

¹⁴ Ibid. pp.38-39.

¹⁵ <https://www.news24.com/w24/SelfCare/Wellness/Mind/sex-work-is-work-why-this-woman-chose-to-sell-sex-20190702>

¹⁶ <https://www.groundup.org.za/article/sex-workers-thank-ramaphosa/>

¹⁷ <https://www.lhr.org.za/>